

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Willie Rogers,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



March 20, 2024

Court of Appeals Case No.
23A-PC-3089

Appeal from the LaGrange Circuit Court

The Honorable William Walz, Judge

Trial Court Cause No.
44C01-2312-PC-3

Memorandum Decision by Judge Riley
Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Petitioner, Willie Rogers (Rogers), appeals the post-conviction court's denial of his petition for post-conviction relief.
- [2] We affirm.

ISSUE

- [3] Rogers presents this court with one issue on appeal: Whether the post-conviction court properly denied Rogers's petition.

FACTS AND PROCEDURAL HISTORY

- [4] The facts, as found by this court on direct appeal, are as follows:

The conviction arises from Rogers's second violation of a protective order issued on behalf of a former co-worker. In April 2021, the former co-worker received an anonymous message asking her to either call a listed telephone number or visit a particular address. She verified that the address belonged to Rogers and reported the message to the police, who also verified the address. An officer then called the phone number from the message and received a return call identifying the caller as Rogers.

The former co-worker received yet another call from that number a few months later. She took a screenshot of the incoming call and once again contacted the police. The State then charged Rogers with invasion of privacy as a Class A misdemeanor and harassment as a Class B misdemeanor. Rogers proceeded to a jury trial wherein he represented himself. The jury found him

guilty, and the trial court sentenced Rogers to one year in prison with all but 120 days suspended to probation. This appeal ensued.

Rogers v. State, 2023 WL 4945103, at 1 (August 3, 2023) (internal footnotes omitted). Rogers, appearing *pro se*, appealed his conviction. *Id.* On direct appeal, Rogers disputed the “misstatements or fabrications in the probable cause affidavit that led to his arrest.” *Id.* at 2. This court found the issue waived for failing to present a cogent argument, but nonetheless meritless, and affirmed his conviction. *Id.*

[5] On December 1, 2023, Rogers filed his petition for post-conviction relief. In his petition, Rogers raised allegations, couched in terms of fundamental error, of prosecutorial misconduct, in the admission of evidence, and in the sufficiency of the evidence supporting his conviction. The State objected because the issues raised were known and available to Rogers on direct appeal. Rogers filed two responses to the State’s objection. On December 21, 2023, the post-conviction court, without a hearing, summarily denied his petition for relief.

[6] Rogers now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[7] Post-conviction proceedings are civil in nature, and the petitioner must therefore establish his claims by a preponderance of the evidence. *Ind. Post-Conviction Rule 1(5)*. “Post-conviction proceedings do not afford the petitioner an opportunity for a super appeal, but rather, provide the opportunity to raise

issues that were unknown or unavailable at the time of the original trial or the direct appeal.” *Turner v. State*, 974 N.E.2d 575, 581 (Ind. Ct. App. 2012), *trans. denied*. On appeal, a petitioner who has been denied post-conviction relief faces a “rigorous standard of review.” *Dewitt v. State*, 755 N.E.2d 167, 169 (Ind. 2001). To prevail, the petitioner must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Hall v. State*, 849 N.E.2d 466, 469 (Ind. 2006).

[8] Indiana Post-Conviction Rule 1(4)(g) provides that:

[t]he court may grant a motion by either party for summary disposition of the petition when it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court may ask for oral argument on the legal issue raised. If an issue of material fact is raised, then the court shall hold an evidentiary hearing as soon as reasonably possible.

A summary disposition of a petition for post-conviction relief under Indiana Post-Conviction Rule 1(4)(g) presents a question of law, which we review *de novo*, as we would a grant of summary judgment. *Pierce v. Martin*, 882 N.E.2d 734, 737 (Ind. Ct. App. 2008).

[9] Although Rogers does not dispute the lack of hearing, as he stated in his petition that no hearing was necessary, he contends that the post-conviction court erred when it did not enter specific findings of fact and conclusions of law under Indiana Post-Conviction Rule 1(6). A post-conviction court’s order

dismissing a petition for post-conviction relief is generally improper if it fails to address the issues presented. In *Allen v. State*, 749 N.E.2d 1158, 1164 (Ind. 2001), our supreme court stated that “[a] court that hears a post-conviction claim must make findings of fact and conclusions of law on all issues presented in the petition.” However, our supreme court has also held that, when the “facts underlying [the petition] are not in dispute” and the issues on appeal “are clear,” a “general and conclusory judgment” from the post-conviction court is not reversible error. *Lowe v. State*, 455 N.E.2d 1126, 1128 (Ind. 1983).

[10] *Lowe* applies here. All issues raised by Rogers in his petition for post-conviction relief were claims known and available to him at trial and on direct appeal: prosecutorial misconduct, admissibility of the evidence, and the sufficiency of the evidence supporting his conviction. Issues available on direct appeal but not raised are waived. *Ward v. State*, 969 N.E.2d 46, 51 (Ind. 2012); *Wilson v. State*, 157 N.E.3d 1163, 1169 (Ind. 2020) (potential post-conviction relief is limited in scope to issues unknown at trial or unavailable on direct appeal). Rogers’s claim that he “was inflicted with ineffective assistance of counsel by being *[p]ro [s]e* and not litigating sufficiently the claims and/or evidence for proper justice” but now has a better understanding of the issues, as an excuse for failing to raise these issues at trial is not persuasive. (Appellant’s Br. p. 8). It is well settled that *pro se* litigants are held to the same standards as licensed attorneys. *Rose v. State*, 120 N.E.3d 262, 266 (Ind. Ct. App. 2019), *trans. denied*. A defendant who chooses to proceed *pro se* must accept the burdens and hazards of self-representation and may not assert a Sixth Amendment claim of

ineffective assistance of counsel. *Warr v. State*, 877 N.E.2d 817, 823 (Ind. Ct. App. 2007), *trans. denied*.

[11] Therefore, the post-conviction court did not commit reversible error by entering a general order where, as here, there were no claims available for post-conviction review.

CONCLUSION

[12] Based on the foregoing, we conclude that the post-conviction court properly denied Rogers's petition for post-conviction relief.

[13] Affirmed.

Brown, J. and Foley J. concur

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